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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/808,934	03/25/2004	Masahiko Sato	450100-04974	6893

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FROMMER LAWRENCE & HAUG LLP  
745 Fifth Avenue  
New York, NY 10151

EXAMINER
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DUNCAN, MARC M

ART UNIT	PAPER NUMBER
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2113

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	03/02/2007	PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

**Office Action Summary**

Application No.

10/808,934

Applicant(s)

SATO ET AL.

Examiner

Marc Duncan

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 13 December 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-11 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-11 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 25 March 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## **FINAL REJECTION**

### ***Status of the Claims***

Claims 1-11 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claims 1-11 are rejected under 35 U.S.C. 102(e) as being anticipated by Huh et al. (6,584,559).

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1-11 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claims 1, 9, 10 and 11 each claim "obtaining a total sum of an error for each of said files." It is clear from applicant's specification that the invention intended to be claimed utilizes a checksum. It would therefore appear that what applicant intends to claim with this limitation is a checksum over the total of the predetermined number of files and not a sum total of error. A checksum is used as a means of detecting whether an error occurred and not as a characterization of an error. The claim limitation in question, i.e. "a total sum of an error for each of said files" does not make sense in light of the specification and therefore makes the claims indefinite.

Additionally, it is unclear how a calculated value indicative of an error can be compared to a sum of an error, as applicant has claimed in each of claims 1 and 9-11.

Further, applicant, in claims 5 and 6, has claimed "comparing said first calculation value and said error." Again, it is unclear how the first calculation value can be compared with an error. The examiner believes, in fact, that applicant intends to compare the first calculation value with a previously calculated value, in accordance with the way a checksum actually functions and with the description in the specification.

Claim 7 recites the limitation "one of said storage areas" in line 4. There is insufficient antecedent basis for this limitation in the claim. There is only one storage area present in the claims.

Claim 8 recites the limitation "one of said first storage area and said second storage area" in line 5. There is insufficient antecedent basis for this limitation in the claim.

Claim 8 recites the limitation "said third storage area" in line 9. There is insufficient antecedent basis for this limitation in the claim.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1-11 are rejected under 35 U.S.C. 102(e) as being anticipated by Huh et al. (6,584,559).

Regarding claims 1 and 9-11:

Huh teaches:

a storage area (Fig. 1 – 26);

download processing means for downloading software of a predetermined number of files into said storage area and for obtaining a total sum of an error for each of said files (col. 3 lines 42-50 and col. 3 line 61-col. 4 line 13);

first calculating means for calculating a first calculation value indicative of an error for each of said files (col. 3 lines 56-65 and col. 4 lines 6-9);

second calculating means for calculating a second calculation value indicative of a total error of said files on the basis of said first calculation value when all said files are downloaded (col. 4 lines 35-38 and lines 55-60); and

determining means for determining whether said information processing apparatus has normally ended by comparing said second calculation value with said total sum (col. 4 lines 35-38 and lines 55-60 – it is inherent to function of a checksum that the second value must necessarily be compared to the previously obtained value in order to determine validity).

Regarding claim 2:

Huh teaches:

further comprising a second storage area (Fig. 1 – 22); and

selecting means for selecting one of said storage areas into which said software is to be downloaded (col. 3 lines 54-60).

Regarding claim 3:

Huh teaches:

a third storage area (Fig. 1 – 56), wherein said first calculating means copies the downloaded software into said third storage area (col. 3 lines 54-60).

Regarding claim 4:

Huh teaches:

wherein said determining means comprising: verifying means for verifying whether the shutdown of said information processing apparatus has ended (col. 4 line 65-col. 5 line 3); and setting means for setting predetermined information indicative of normal end of the shutdown of said information processing apparatus (col. 5 lines 4-40).

Regarding claim 5:

Huh teaches:

wherein said download processing means gets an error for each of said files, and said determining means compares said first calculation value with said error if, as a result of the comparison by said determining means, there is a mismatch between said second calculation value and said total sum (col. 3 line 56-col. 4 line 13 – a checksum inherently requires a

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comparing means. Additionally, the first calculation value is compared to a first calculation value of server or medium regardless of whether or not the second calculation values match).

Regarding claim 6:

Huh teaches:

wherein, if there is a mismatch between said first calculation value and said error, said download processing means downloads a file corresponding to said first calculation value (Fig. 2 – 112, 116, 120, 100, 104, 108).

Regarding claim 7:

Huh teaches:

startup means for starting up said information processing apparatus by selecting one of said storage areas on the basis of said predetermined information set by said setting means (col. 5 lines 4-66).

Regarding claim 8:

Huh teaches:

wherein said startup means has setting information determining means for determining the information set by said setting means which, starts up said information processing apparatus by use of the software stored in one of said first storage area and said second storage area, if the predetermined information indicative of normal end of the shutdown of said information processing apparatus is found set by said setting information determining means (col. 5 lines 4-

66 – if the new firmware is invalid, the previous valid firmware or the permanent firmware are used to boot the machine), and

starts up said information processing apparatus by use of the software stored in said third storage area, if the predetermined information indicative of normal end of the shutdown of said information processing apparatus is found not set by said setting information determining mean (col. 5 lines 4-66 – if the new firmware is valid, the machine is booted using the new firmware stored in the nonvolatile memory).

### ***Double Patenting***

Applicant is advised that should claim 10 be found allowable, claim 11 will be objected to under 37 CFR 1.75 as being a substantial duplicate thereof. When two claims in an application are duplicates or else are so close in content that they both cover the same thing, despite a slight difference in wording, it is proper after allowing one claim to object to the other as being a substantial duplicate of the allowed claim. See MPEP § 706.03(k).

### ***Response to Arguments***

Applicant's arguments filed 12/13/06 have been fully considered but they are not persuasive.

Applicant argues that multiple limitations of the amended claims are not found in the Huh reference. The examiner respectfully disagrees. The pertinent areas of the cited reference have been detailed above and mapped to the claim limitations in question. In addition, applicant's amended claims contain limitations which are inconsistent with the description in applicant's



specification and thereby make the claims indefinite, as detailed above. The Huh reference, as cited above, teaches downloading a specific number of files, validating each of the files using a checksum for each file, copying the downloaded complete firmware into semi-permanent memory, validating the complete firmware using a checksum after downloading and copying and starting up the computer using the complete, validated new firmware, all of which is consistent with the description of applicant's invention contained in the specification.

### ***Conclusion***

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).


A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action. .

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Marc Duncan whose telephone number is 571-272-3646. The examiner can normally be reached on M-F 9:00-5:00.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Robert Beausoliel can be reached on 571-272-3645. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



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